

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

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BERTRAM LOEB	:	
	:	
v.	:	No. 02-CV-3833
	:	
BANK OF AMERICA,	:	
HERBERT S. GARTEN, ESQUIRE,	:	
SHELDON G. DAGURT, ESQUIRE, and	:	JURY TRIAL DEMANDED
FEDDER & GARTEN, P.A.	:	

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**PLAINTIFF'S ANSWER TO THE LAW FIRM DEFENDANTS' MOTION FOR  
LEAVE TO FILE A REPLY MEMORANDUM IN FURTHER SUPPORT OF  
THE LAW FIRM DEFENDANTS' MOTION TO DISMISS FOR LACK  
OF PERSONAL JURISDICTION AND FOR IMPROPER VENUE OR, IN THE  
ALTERNATIVE, TO TRANSFER PURSUANT TO 28 U.S.C. § 1404(a)**

Plaintiff Bertram Loeb, by and through his undersigned attorneys, hereby submits this Answer to the Law Firm Defendants' Motion for Leave to File a Reply Memorandum in Further Support of the Law Firm Defendants' Motion to Dismiss for Lack of Personal Jurisdiction and for Improper Venue or, in the Alternative, to Transfer Pursuant to 28 U.S.C. § 1404(a), and in support thereof avers as follows:

1. Admitted.
2. Admitted.
3. Denied. It is not believe that said Reply Brief is intended to address what it perceived to be "certain legal arguments and misconstrued case law set forth in Plaintiff's Opposition." To the contrary, it is believed that said Reply Brief is offered to reiterate arguments previously advanced. Therefore, it is denied that further briefing is necessary. The parties have made their respective positions abundantly clear in their principal briefs, and the Law

Firm Defendants' Reply Brief merely reiterates mischaracterizations of Plaintiff's Complaint which were made in the Law Firm Defendants' principal brief. By way of example, the Law Firm Defendants open their proposed Reply Brief with the sentence "Plaintiff, a 2.9% shareholder, board member, and Vice President of Beta Corporation ("Beta"), a Maryland corporation based in Maryland, filed this lawsuit to challenge fees and commissions that Beta paid to F & G in Maryland." This sentence completely misapprehends why Plaintiff filed this suit. Plaintiff's claims are straight forward and revolve around: (1) whether the trustees breached their duty of loyalty to Loeb as a trust beneficiary when Garten served as co-trustee while also serving as a corporate officer, director, and counsel to Beta Corporation(a conflict of interest which is prohibited as a matter of law); (2) whether the trustees breached their duty of loyalty to Loeb when they profited from transactions that conflicted with their fiduciary duties as trustee; and (3) whether the Bank of America as trustee breached its duty of loyalty to Loeb when they failed to object to the wrongful actions of their co-trustee. Further, Plaintiff's Complaint, Brief in Opposition, and accompanying affidavit clearly demonstrate that this Court has power over all Defendants, and venue is appropriate in the Eastern District of Pennsylvania.

4. Admitted. By way of further answer, if the Court believes that further exposition on any issue in either Plaintiff's or Defendants' Briefs is warranted, Plaintiff respectfully requests oral argument before this Court.

WHEREFORE, Plaintiff respectfully requests that the Court deny the Defendants' Motion for Leave to File a Reply Memorandum and award such other relief as the Court deems appropriate.

Respectfully submitted,

POWELL, TRACHTMAN, LOGAN, CARRLE,  
BOWMAN & LOMBARDO, P.C.

Dated: October 11, 2002

By: \_\_\_\_\_  
Paul A. Logan  
Malcolm B. Jacobson  
Thomas J. Bogar  
Kevin K. Carton, Jr.

*Attorneys for Plaintiffs*

**CERTIFICATE OF SERVICE**

I, Kevin K. Carton, Jr., hereby certify that on this 11<sup>th</sup> day of October, 2002, I caused a true and correct copy of Plaintiff's Answer to the Law Firm Defendants' Motion for Leave to File a Reply Memorandum in Further Support of the Law Firm Defendants' Motion to Dismiss for Lack of Personal Jurisdiction and for Improper Venue or, in the Alternative, to Transfer Pursuant to 28 U.S.C. § 1404(a) to be served upon the following counsel of record via facsimile and first class mail, postage prepaid, addressed as follows:

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Kevin K. Carton Jr.

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No. 02-CV-3833

JURY TRIAL DEMANDED

**ORDER**

AND NOW, this \_\_\_\_\_ day of \_\_\_\_\_, 2002, upon consideration of the Motion for Leave to File a Reply Memorandum in Further Support of The Law Firm Defendants' Motion to Dismiss for Lack of Personal Jurisdiction and for Improper Venue or, in the Alternative, to Transfer Pursuant to 28 U.S.C. § 1404(a), it is hereby ORDERED that the Law Firm Defendants' Motion is DENIED.

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Brody, J.